

NOTICE
ADMINISTRATIVE OFFICE OF THE TRIAL COURT

RE: COURT-CONNECTED DISPUTE RESOLUTION SERVICES

ANNOUNCEMENT: The Chief Justice for Administration and Management, pursuant to the Uniform Rules on Dispute Resolution, Supreme Judicial Court Rule 1:18, hereby announces the commencement of the Uniform Re-Application Process to receive referrals for court-connected alternative dispute resolution services. The Trial Court invites applications from programs seeking approval to receive court referred cases for dispute resolution services from each court department.

1. Eligibility. Pursuant to the Uniform Rules on Dispute Resolution, which became effective on February 1, 1999, the Departments of the Massachusetts Trial Court are only permitted to make referrals for court-connected alternative dispute resolution services to programs approved by the Chief Justice of the applicable Trial Court Department.

2. Programs Previously Approved. All prior approvals to provide court-connected alternative dispute resolution services will expire on **January 1, 2005**. Therefore, all programs currently approved to provide services in the Trial Court must reapply if they seek continued approval.

3. Approval of Programs. All programs currently approved to provide court-connected alternative dispute resolution services in the Trial Court must reapply and any new programs seeking approval to provide court-connected alternative dispute resolution services must apply for approval. In order to receive referrals on or after **January 1, 2005**, a program must (1) submit a Program Application Form (hereafter "PA Form") to the department or departments in which the program seeks to receive referrals, and (2) receive written approval from the Chief Justice of the Department or Departments.

4. Obtaining Forms. The PA Form may be obtained at the Administrative Office of the Trial Court or on the Massachusetts Trial Court web site at [www.state.ma.us/courts/admin/legal.html].

5. Program Applications. The PA Form must be received by the appropriate Department or Departments on or before **November 17, 2004**. A program must submit a separate application to the Chief Justice of each Department to which it is applying to provide services and one copy to the Administrative Office of the Trial Court. Programs will be approved as of January 1, 2005 and such approval will expire on **January 1, 2007**.

6. Questions. Any questions about this notice may be directed to Timothy M. Linnehan, Esq., Coordinator of ADR Services, the Administrative Office of the Trial Court (617-742-8575).

Robert A. Mulligan
Chief Justice for Administration and Management

Dated: August 13, 2004

PROGRAM APPLICATION FORM

Application by a program for approval. ALL prior approvals, pursuant to Rule 4 (a) of the Uniform Rules on Dispute Resolution, to provide alternative dispute resolution services in the Trial Court will expire on **January 1, 2005**. Therefore, all programs currently approved to provide court-connected alternative dispute resolution services in the Trial Court must reapply and any new programs seeking approval to provide court-connected alternative dispute resolution services must apply for approval. Part Two of this form contains questions added by certain departments, and must be completed if the program seeks approval in a department which has added questions. In addition, Programs must complete Appendix A to certify compliance with the conditions of the application.

Submission of Applications. In order for a program to be approved after January 1, 2005, the completed form must be returned on or before **November 17, 2004** to the Chief Justice of the Department or Departments in which the program seeks eligibility to receive referrals. In addition to sending the application to each applicable Department, one copy of each application must be sent to the Administrative Office of the Trial Court, 2 Center Plaza, Room 540, Boston MA, 02108, Attn: Coordinator of ADR Services. The names and addresses for the Chief Justices of each Department are:

Honorable Charles R. Johnson
Chief Justice
Boston Municipal Court Department
U. S. Post Office & Courthouse
90 Devonshire Street - 16th Floor
Boston, MA 02109

Honorable Lynda M. Connolly
Chief Justice
District Court Department
Two Center Plaza, Suite 200
Boston, MA 02108

Honorable Manuel Kyriakakis
Chief Justice
Housing Court Department
Edward W. Brooke Courthouse
24 New Chardon Street
Boston, MA 02114

Honorable Martha P. Grace
Chief Justice
Juvenile Court Department
3 Center Plaza, Suite 520
Boston, MA 02108

Honorable Karyn F. Scheier
Chief Justice
Land Court Department
226 Causeway Street
Boston, MA 02114

Honorable Sean M. Dunphy
Chief Justice
Probate and Family Court Department
Two Center Plaza, Suite 210
Boston, MA 02108

Honorable Suzanne V. DeVecchio
Chief Justice
Superior Court Department
U. S. Post Office & Courthouse
90 Devonshire Street - Room 1417
Boston, MA 02109

Guidelines: Please type or print answers. Each application must include a certification conforming to the certificate found in Appendix A and signed by someone authorized to act as agent for the program. Program applications will be approved based on the needs and best interests of the Trial Court and the program's capabilities. Applications may be approved or disapproved based on the applicant's written submission, without more, and applicants should therefore make their applications as complete and descriptive as possible. Programs may append letters of recommendation to their applications.

Decision-making process. Decisions will be made by the Chief Justice of the appropriate Department of the Trial Court regarding programs seeking approval to provide services after January 1, 2005. Decisions will be made and programs shall be notified no later than January 1, 2005 by the Chief Justice. The decision of the Chief Justice shall be final.

Eligibility. Applications may be submitted only by a dispute resolution program. Supreme Judicial Court Rule 1:18, Uniform Rules on Dispute Resolution, Rule 2, defines "program" as follows: "An organization with which neutrals are affiliated, through membership on a roster or a similar relationship, which administers, provides and monitors dispute resolution services. A program may be operated by a court employee or by an organization independent of the court, including a corporation or a governmental agency . . ."

Qualifications Standards for Neutrals. Please be advised there are new qualification standards for neutrals seeking to perform court-connected alternative dispute resolution services effective January 1, 2005. This is the first re-application process subsequent to the adoption of the new standards and the implementation date of these standards coincides with the start date for new program approvals. These standards are established by Rule 8 of the Uniform Rules on Dispute Resolution.

Rule 8 of the Uniform Rules. Rule 8 of the Uniform Rules of Dispute Resolution was adopted by the Supreme Judicial Court on November 20, 2003 and will take effect January 1, 2005. The rule sets forth qualification standards for neutrals who provide court-connected dispute resolution services. The rule establishes requirements for training, evaluation, mentoring, and continuing education and evaluation for the following seven categories of neutrals: mediators, arbitrators, case evaluators, conciliators, mini-trial neutrals, summary jury trial neutrals, and dispute intervenors. In addition, Rule 8 provides for alternative methods for meeting these requirements, and contains a provision clause that allows Trial Court Chief Justices to exercise a one-time exemption of neutrals who meet certain requirements from the initial training and other requirements. All programs seeking to be approved must certify in the application that their neutrals meet the requirements of Rule 8 and the accompanying Guidelines promulgated by the Chief Justice for Administration and Management. Therefore, please complete and submit with your application forms 1, 2 & 3 found in Appendix E to certify your compliance.

A summary of the requirements of Rule 8 and the Guidelines are enclosed with the PA Form. Also, Rule 8 of the Uniform Rules of Dispute Resolution and the Guidelines can be found on the Internet at [www.state.ma.us/courts/admin/legal.html].

Limited Exemption. Rule 8(k) creates a one time exemption for mediators, arbitrators, case evaluators and conciliators from the training, mentoring and evaluation requirements of Rule 8 based on certain experience-based criteria found in Rule 8 (k)(iii). Only those programs which were approved on or before July 1, 2002 to provide court-connected ADR services are eligible to use this exemption. Pursuant to Rule 8(k), the court departments listed below have elected to exempt the applicable neutrals from the training, mentoring and evaluation requirements set forth in Rule 8 of the Uniform Rules on Dispute Resolution. Please note that this exemption will be available only to those neutrals who meet the requirements of Rule 8(k)(iii) and are determined by the program with which they are affiliated to be qualified for the exemption.

Boston Municipal Court Department - Mediators and Conciliators

District Court Department - Mediators, Arbitrators, Case Evaluators and Conciliators

Housing Court Department - Mediators

Juvenile Court Department - Mediators

Land Court Department - Mediators

Probate & Family Court Department - Mediators, Arbitrators, Case Evaluators and Conciliators

Superior Court Department - Mediators, Arbitrators, Case Evaluators and Conciliators

PROGRAM APPROVAL APPLICATION - COVER SHEET

Number of Neutrals on Program Roster:

PROGRAM APPLICATION - NARRATIVE

- 1. Program Information:** Indicate numbers and types of cases handled for each of the past three years. List types of ADR services provided. Describe in more detail the services listed on cover sheet which your program has provided to a court. Describe any special expertise your program offers based on experience or training of neutrals on your roster. To comply with the need for foreign languages, American sign language or oral interpreting, list any related fluency on the part of your neutrals. Describe the hours your program's services are available.
- 2. Space:** If approved, where will you provide services? If space is not available in a courthouse, where, specifically, would you provide services in each division? Is the space handicapped accessible? Describe any guidelines you have for the type of space required.
- 3. Methodology:** Describe and attach your process and policies in accordance with Uniform Rule 7(a) for receiving referrals, screening referrals for appropriateness, scheduling or canceling sessions, distributing cases among neutrals on the roster, and following up after sessions. Describe your policies for assuring that clients are not subject to inappropriate pressure to settle.
- 4. Quality Control:** Describe how you evaluate your program and your neutrals. Describe any additional steps you take to ensure the quality of services you provide. Describe your process for assembling and maintaining the roster of neutrals, including the methods for adding and removing neutrals in accordance with Uniform Rule 7(c).
- 5. Record Keeping:** Describe the types of records you keep and the types of data you collect.
- 6. Diversity:** Describe or attach any policies you have prohibiting discrimination against your staff, neutrals or clients. Describe any policies which promote diversity as to race, gender, ethnicity, experience, and training among your staff, your neutrals and your clients.
- 7. Fees:** If you plan to charge fees for any court-connected service, attach your fee schedule, including specified criteria for fee waived or reduced fee services to be made available to indigent and low income litigants. (Fees must be approved by the Chief Justice of the Department in which services are provided.)
- 8. Affiliations:** Is your program the parent or subsidiary of any other organization? If so, describe the relationship. Does any officer or employee of the courts have an affiliation or relationship with your program? If your program has a written policy for addressing conflicts of interest, please attach.

- 9. Divisions:** Please indicate each Trial Court Department in which your program seeks approval and each Division within that Department in which you seek approval.
- 10. Roster:** Please describe the size and composition of your roster of neutrals including what percentage meet the basic training requirement, the limited exemption and the alternative methods requirement.
- 11. Neutral Qualifications:** Please list, describe and explain how each neutral on your roster satisfies the training, mentoring and evaluation requirements in Rule 8 of the Uniform Rules on Dispute Resolution. **See Appendix E.** Please describe your policies, procedures and record keeping which documents how all neutrals on your roster satisfy the qualification requirements of Rule 8 (b)(v) of the Uniform Rules on Dispute Resolution.
- 12. Continuing Education:** Please describe how your program intends to implement the ongoing continuing education requirements in Rule 8 of the Uniform Rules on Dispute Resolution and/or your prior continuing education policy or practice.
- 13. Continuing Evaluation:** Please describe how your program intends to implement the ongoing continuing evaluation requirements in Rule 8 of the Uniform Rules on Dispute Resolution and/or your prior continuing evaluation policy or practice.
- 14. Court Orientation:** Please describe any court orientation your program provides to your roster of neutrals.
- 15. Other** Please feel free to add any other information that you believe may assist in the evaluation of your application.

PROGRAM APPLICATION

PART TWO - ANY ADDED QUESTIONS OR REQUIREMENTS FROM TRIAL COURT DEPARTMENTS

DISTRICT COURT DEPARTMENT:

Program Approval:

If you are NOT currently approved and are seeking approval to provide services in one or more District Court Divisions you must obtain, and include with your application, a letter from the presiding justice of each such court division, reflecting his or her intention to utilize dispute resolution services of the type you intend to provide.

JUVENILE COURT DEPARTMENT:

Specialized Referrals:

In your response to “Program Application - Narrative” # 4, entitled “Quality Control,” please note that when determining program approval, the Juvenile Court will consider relevant subject matter expertise including, but not limited to, education and training in the areas of child and family welfare, permanency mediation and parent-child mediation.

PROBATE AND FAMILY COURT DEPARTMENT:

Indigent Litigants:

The Probate and Family Court Department seeks to ensure access to ADR services for indigent and low income litigants. Therefore, programs applying for approval to receive referrals for court connected dispute resolution services from the Probate and Family Court are advised that, even if the fee schedule provided in response to question #7 is approved, they are required to provide some ADR services on a fee-waived or reduced fee basis.

Names of Neutrals:

Please provide the names of all individuals who may serve as neutrals in cases referred to your program by the Probate and Family Court Department. Please indicate if they have been appointed as a Master, special Master, parenting coordinator, guardian ad litem, or any other fee-generating appointment by a Justice of the Probate and Family Court within the past two years. If any neutrals have been appointed in any of these capacities, please indicate in which division(s) and the categories of appointment.

Specialized Referrals:

Please note that, when determining program approval, the Probate and Family Court Department will consider relevant subject matter expertise including but not limited to training specifically in the areas of family law, family dynamics, child developmental issues, non-traditional families, complex financial issues (e.g., business valuation, retirement benefits, tax consequences of divorce), permanency mediation, and probate issues. As part of your response to “Program Application - Narrative” Question #4, please indicate which neutrals on your roster have such subject matter

expertise, and the dates and providers of any specialized training they have received.

Affiliations:

In your response to “Program Application - Narrative” Question # 8, please describe any affiliation or relationship with your program that the family member of an officer or employee of the courts may have. Please describe and attach your program’s conflict of interest policies.

Record Keeping:

Please be advised that the Probate and Family Court Department has reporting requirements to track court referrals, including quarterly reporting to the referring court and the Department’s Administrative Office.

Other:

Please confirm the availability of your program representative(s) to meet with Probate and Family Court Department representatives upon request.

SUPERIOR COURT DEPARTMENT:

Programs applying for approval to receive referrals for court connected dispute resolution services from the Superior Court are advised that the Chief Justice of the Superior Court has determined that the Superior Court will utilize the limited exemption (as provided in Rule 8 (k), Uniform Rules on Dispute Resolution) from the training, mentoring, and evaluation requirements for mediators, arbitrators, case evaluators, and/or conciliators. (Please see Appendix E)

ADDITIONAL PROGRAM REQUIREMENTS: Each approved program shall perform the following services:

1. Maintain a roster of a sufficient number and variety of ADR providers so that an appropriate ADR provider is reasonably available for any matter referred for ADR.
2. Ensure that ADR providers on the roster are ready, willing and able to perform high quality ADR services for the types of cases that are filed in the Superior Court.
3. Provide persons who are qualified and experienced to conduct screening, review and evaluation of cases and to make reasonable recommendations regarding referrals to ADR providers. Provide lists of providers and their skills to the attorneys and parties considering ADR.
4. Recruit, train, monitor, evaluate and retain appropriately qualified persons on a roster of ADR providers. Do the initial handling of complaints about services of neutrals working in the program.
5. Comply with all the rules and procedures of the Supreme Judicial Court (including the Uniform Rules on Dispute Resolution), the Trial Court and the Superior Court relating to ADR.
6. Provide case coordination, including neutral selection, conflict of interest checks, scheduling of ADR session, collection of agreements to participate, fee collection, pre-ADR session prep and post session follow-up.
7. Record keeping and reporting:

- a. Collect and maintain in a database information on every case referred, including referral source/court, referral date, case name, docket number, case type, status of case, type of ADR provided, name of neutral, ADR outcome, fees charged, response to participant evaluation.
- b. Report to the screener the outcome of every case referred when program services have ended (or, if program declines a referral, the reasons therefor) by completing the referral form and returning it to the screener.
- c. Submit to court caseload reports on court-referred cases on a quarterly and yearly basis pursuant to requirements of Uniform Rules.

8. Evaluation:

- a. Send written evaluation forms regularly to parties/counsel re: satisfaction with ADR services and neutrals
- b. Monitor performance of staff, neutrals, handle complaints, and insure overall quality and effectiveness of ADR services provided to court referred cases
- c. Include information about written complaints re: ADR services in quarterly and yearly reports

9. Provide ADR services to indigent parties, pro bono or on sliding scale, to extent necessary given funding available for such services to be provided by screeners/administrators.

10. Work with court and screeners/administrators to develop fair rotational system of referrals in event parties cannot or will not choose a particular ADR program.

11. Provide information regarding the approved program (in form to be determined in consultation with the court) to be provided to litigants to facilitate their choice of ADR programs.

12. Report to the court any complaints concerning screeners/administrators' or approved programs' services.

APPENDIX A

CERTIFICATION FORM

I certify the following with regard to the below-named program: that it qualifies as a “program” as that term is used in Rule 2 of the Uniform Rules; that it agrees to comply with the Trial Court Policy on Data Collection and Record Keeping set forth in Appendix B; that it agrees to comply with the Trial Court Complaint Mechanism set forth in Appendix C; that it agrees to comply with the Trial Court Policy on Evaluation of Dispute Resolution Services set forth in Appendix D; that it agrees to comply with the standards set forth in Rule 7 of the Uniform Rules; that it agrees to comply with the standards set forth in Rule 8 and the Guidelines for the implementation of Rule 8 to ensure that neutrals on its roster meet applicable qualification standards, (See Appendix E) that it will follow the ethical standards set forth in Rule 9 of the Uniform Rules; that it is in compliance with all other applicable state and federal laws.

All the information contained in this application is true to the best of my knowledge and belief.

Signature

Print Name

Title

Authorized agent for the _____
Program.

Date

APPENDIX B

TRIAL COURT POLICY ON DATA COLLECTION AND RECORD KEEPING

It is the policy of the Trial Court that courts must, in each case, keep a record of each referral for court connected dispute resolution services under SJC Rule 1:18, Uniform Rules on Dispute Resolution. Approved programs must, in addition to any other requirements established by the Chief Justice of a Trial Court Department, maintain records of cases referred to them to enable the appropriate Department or Departments of the Trial Court to evaluate the program. See Uniform Rules 3(c), 3(d), Commentary to 4(b), and 6(g).

At a minimum, approved programs must maintain for at least three years a written record of each case referred by each particular court using a form prescribed by the Chief Justice for Administration and Management.

Every approved program shall file a report within sixty (60) days following the end of the Trial Court's fiscal year (June 30) with the Chief Justice of each Department from which they have received a referral using the Dispute Resolution Program Report prescribed by the Chief Justice for Administration and Management. This annual report shall include a summary of the dispute resolution services provided to the Department during the previous fiscal year including a summary of the case record information and the number and nature of written complaints about court connected dispute resolution services received, if any. Reports shall be prepared consistent with the confidentiality requirements of the Uniform Rules on Dispute Resolution.

APPENDIX C

TRIAL COURT POLICY ON COMPLAINTS

1. FILING:

Any individual wishing to make a complaint regarding court-connected dispute resolution services may do so by filing a written complaint with any of the following individuals: the director of the dispute resolution program that provided the services; the person appointed by the local court to be its dispute resolution coordinator or the applicable the First Justice, the Regional Administrative Justice or the Chief Justice of the Court Department and/or their designee from where the complaint arose. All complaints are to be resolved at the local level if possible.

2. CONTENT OF COMPLAINT:

The complaint should identify the court or program where the alleged violation took place and the specific conduct that forms the basis of the complaint.

3. DISPOSITION OF COMPLAINT:

Before a neutral is deemed no longer qualified to provide court-connected dispute resolution services or a program is removed from the Department's list of approved programs, said neutral or program has a right to a formal hearing at a time and manner to be decided by the Chief Justice of the Department of the Trial Court from which the complaint arose. A formal hearing is not required unless a neutral is deemed no longer qualified to provide court-connected dispute resolution services or a program is disapproved from a Department's list of programs to provide court-connected dispute resolution services.

4. ALTERNATIVE DISPUTE RESOLUTION:

In all cases, alternative dispute resolution services should be made available to the parties for the resolution of complaints.

Note: Court personnel administering this policy should direct any inquiries they have about the resolution of complaints to the Legal Department of the Administrative Office of the Trial Court.

APPENDIX D

TRIAL COURT POLICY ON EVALUATION OF DISPUTE RESOLUTION SERVICES

The evaluations conducted by approved dispute resolution programs pursuant to Rule 7(a), SJC. Rule 1:18, Uniform Rules on Dispute Resolution, must produce records capable of being audited. Programs shall retain these records for at least three years. Each approved program should either occasionally or regularly administer evaluations in which all or a bona fide sample of parties and/or their lawyers are provided with an evaluation form and an opportunity at the conclusion of the dispute resolution service to submit a written assessment of the program and the neutrals.